

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

FIVE STAR ACADEMY, INC.,
And
TONY DEMARCO WEST,
Plaintiffs,

Case No.: 6:21-cv-00011-EKD

v.

MOTION

TESLA, INC. D/B/A TESLA MOTORS, INC.,
Defendant.

PLAINTIFFS' MOTION TO ENTER JUDGMENT AND
NOTICE OF SATISFACTION OF JUDGMENT

Now into Court, through undersigned counsel, comes Plaintiffs Five Star Academy, Inc. and Tony DeMarco West, and moves the Court to enter judgment against Defendant Tesla, Inc. d/b/a Tesla Motors, Inc. (hereafter "*Tesla*") on the following grounds of fact and law:

1. Plaintiffs filed this case in State Court on February 9, 2021. (See, dkt. 1-1).
2. Defendant Tesla removed this case to this Court on March 9, 2021. (See, dkt. 1)
3. On April 19, 2021, Defendant Tesla, through counsel, submitted a Federal Rule of Civil Procedure Rule 68 Offer of Judgment. (See, dkt. 15-1).
4. Federal Rule of Civil Procedure Rule 68 (a) states that "[a]t least 14 days before the date set for trial, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 14 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. **The clerk must then enter judgment.**" (emphasis added).

5. In accordance with Federal Rule of Civil Procedure Rule 68 (a), Plaintiffs' counsel served written notice accepting the offer and then filed the offer and notice of acceptance, plus proof of service, with this Court on April 22, 2021. (See, dkt. 15).
6. In Plaintiffs' Notice of Acceptance, Plaintiffs requested this Court enter judgment in this case for the agreed-upon sum. (Dkt. 15).
7. Plaintiffs request the Court enter judgment pursuant to the Fed. R. Civ. P. Rule 68 accepted offer so that the case may be removed from the docket.
8. Plaintiffs' counsel has received the required payment to satisfy the Rule 68 accepted offer, and upon the entering of judgment in this matter Plaintiff also requests that the judgment be marked as satisfied.
9. Plaintiffs' Motion may appear unnecessary given the timeliness of Defendant Tesla's payment, but this judgment is necessary. An Offer of Judgment under Rule 68 is a powerful tool for Defendants: it allows for protection from costs and fees by Plaintiffs who, in miscalculating their case, may cause the expenditure of the resources of the parties by not accepting a valid offer to resolve a case. Defendant Tesla made its Offer of Judgment to invoke Rule 68's protections, and to use the leverage of the Rule in settlement negotiations. But as the language of Rule 68 clearly states, an Offer of Judgment, once timely accepted, **requires** that judgment be entered. Plaintiffs, as the filing party, are entitled to the entry of that required judgment as part of the *quid pro quo* of the bargain agreed to by the parties. Defendants who utilize Rule 68's protections cannot then sweep their

case under the rug with a dismissal. Judgment was offered and accepted between the parties. It must now be entered.

Respectfully submitted,

Five Star Academy, Inc.
Tony DeMarco West

By: /s/ James B. Feinman
James B. Feinman

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CERTIFICATE OF SERVICE

I hereby certify that the Plaintiffs' Motion for Judgment and Notice of Satisfaction of Judgment has been filed through the ECF system on May 12, 2021, will be sent electronically to the registered counsel as identified in the Notice of Electronic Filing.

/s/ James B. Feinman
Of Counsel